IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 697 OF 2000

The State of Maharashtra ...Petitioner

Versus

Prabhakar Sitaram Zamre
R/o. Shivari, Kazi Majhi Pumji
Chawl, Shivari, Mumbai ...Respondent

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Shri. A.S. Shitole, A.P.P. for Petitioner-State.

None for the Respondent though served.

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CORAM: SMT. V.K. TAHILRAMANI, J.

DATED: 6TH SEPTEMBER, 2004

ORAL JUDGMENT:-

1. The State has preferred this writ petition against the judgment and order dated 9.3.2000 passed by the learned Sessions Judge, Thane in Criminal Appeal No. 17/99. By the said order, the learned Sessions Judge has set aside the order confiscating the vehicle of the appellant therein i.e. the present respondent and directed that the vehicle be returned to the present respondent.

2. Few facts, necessary to decide this writ petition are as under:-

. On 1.5.98, information was received regarding forest goods being illegally transported. Pursuant to the said information a watch was kept and the Forest Officers lay in wait for the vehicle. On 2.5.98 at about 6.20 a.m. the truck in question i.e. truck bearing No. MCY-869 was seen coming from Tilher direction and going towards Bhiwandi side. The said truck was stopped by the Forest Officers. Most of the occupants of the truck ran away, however, three occupants of the truck i.e. accused Nos. 1 to 3 were caught. The said truck was inspected. In the said truck 7.50 Cum. of Kahir pieces were found hidden under bricks. The said truck alongwith unauthorised goods i.e. Kahir pieces came to be seized and three accused persons including the driver of the said truck came to be arrested. In respect of the incident F.I.R. bearing No.5/98 came to be registered U/sec. 26(f) and 41(2) of the Indian Forest Act.

. Thereafter, notices came to be issued under the provisions of Section 61(B)(i) of the Indian Forest Act to the owner of the said truck on 18.6.98 and 18.7.98. However, the owner i.e. present respondent did not turn up or reply to the said notices. Thereafter, on 24.7.98 an advertisement notice was issued in the local newspapers i.e. Daily Loksatta and Daily Hindustan Times calling

upon the owner to remain present for hearing in relation to the issue of confiscation of the truck and claim of the ownership of the truck. However, no one turned up pursuant to the said notices. Finally, on 8.10.98 Conservator of Forest, Vasai issued the order of confiscation of the said truck. In this circumstance, the truck came to be confiscated by the Forest Officer as per the power conferred under section 61(A)(3) of the Indian Forest Act.

3. Being aggrieved by the order of confiscation the respondent herein preferred criminal appeal No. 17/99 in the Court of the learned Sessions Judge, Thane for release of the said truck. By order dated 9.3.2000 the learned Sessions Judge was pleased to direct the Forest department to return the said truck to the respondent herein. Hence, this writ petition.

4. The learned Sessions Judge has set aside the order passed by the Conservator of Forest on the ground that the order of confiscation appears to have been passed on the statement of accused No.1. The accused No.1 has made a statement that the owner had connived in carrying of forest produce alongwith the bricks. However, the learned Sessions Judge failed to consider that the

proceedings before the Conservator of Forest are not in the nature of a regular trial. In earlier decisions of this Court in relation to confiscation of vehicle under the Indian Forest Act the statement of accused persons have been taken into consideration. One of the said decisions is in the case of **Shri. Murlidhar J. Kanjan Vs. Asstt. Conservator of Forests & Anr. in Criminal Writ petition No.649 of 2002 decided on 8th August, 2002.** Moreover, the learned Sessions Judge has placed reliance on the decision of this Court in the case of **Laxman Kisan Mundhe V. The Conservator of Forest & 2 Ors reported in 1998 (3) Bom. L.R. 787: 1999 Cri.L.J. 553.** Reliance has also been placed on the judgment of the Supreme Court in the case of **Assistant Forest Conservator and Ors. V. Sharad Ramchandra Kale reported in 1998 (1) SCC 48: AIR 1998 SC 2927.**

5. It is pertinent to note that section 61 of the Indian Forest Act has been amended and on 1.6.1985 Section 61(A) and 61(B) which were inserted by Mah. 7 of 1985 came into force. The relevant provisions of the amended section 61(A) and 61(B) have not been taken into consideration by the learned Sessions Judge. The said amendment did not come up for consideration in the case of Laxman Kisan Mundhe (Supra) and Sharad Ramchandra Kale (supra).

The relevant portion of section 61(A) and 61(B) read as under:-

61(A) 1. .....

2. .....

3. Where an authorised Officer seizes under sub-section (1) of Sec. 52 any timber, sandalwood, firewood, charcoal or any other notified forest produce which is the property of the State Government or any such property is produced before an authorised Officer under sub-section (1) and he is satisfied that a forest offence has been committed in respect of such property, such authorised officer may, whether or not a prosecution is instituted for the commission of such forest offence, order confiscation of the property so seized together with all tools, boats, vehicles and cattle used in committing such offence".

61(B) (1) No order confiscating any timber, sandalwood, firewood, charcoal or any other

notified forest-produce, tools, boats, vehicles or cattle shall be made under section 61(A) except after notice in writing to the person from whom it is seized and considering his objections, if any :

Provided that no order confiscating a motor vehicle shall be made except after giving notice in writing to the registered owner thereof, if in the opinion of the authorised officer it is practicable to do so, and considering his objections, if any.

(2) Without prejudice to the provisions of sub-section (1), no order confiscating any tool, boat, vehicle or cattle shall be made under section 61(A) if the owner of the tool, boat, vehicle or cattle proves to the satisfaction of the authorised officer that it was used in carrying the timber, sandalwood, firewood charcoal or any other notified forest-produce without the knowledge or connivance of the owner himself, his agent, if any, and the person incharge of the tool, boat, vehicle or cattle and that each of them had taken all reasonable and necessary precautions

against such use.

6. From the bare reading of the aforesaid provisions of the Act, it is clear that the burden is on the owner firstly to prove to the satisfaction of the authorised Officer that the truck was used in carrying forest produce without the knowledge or connivance of the owner himself, and his agent and the person incharge of the vehicle and secondly, that each of them had taken all reasonable and necessary precautions against such use. It is only when these two ingredients are established that the authorised officer cannot confiscate the vehicle used for carrying the forest produce.

7. The learned A.P.P. has argued that the truck has been confiscated by the forest officer under the amended provisions of section 61 of the Act. He submitted that the ACF fully followed the procedure laid down in Section 61(B) (1) and thereafter, the vehicle came to be seized. He submitted that the burden is on the respondent/owner to show that the vehicle was used for carrying notified forest produce without his knowledge or connivance and that of his agents and the persons incharge of the truck and that each of

them had taken all reasonable and necessary precautions against such use.

8. On a plain reading of the provisions relating to Section 61(A) and 61(B), it is clear that it is the owner of the vehicle who has to prove to the satisfaction of the Authorised Officer that his vehicle was used in committing the alleged forest offence without his knowledge or connivance of himself, his agent and the person in charge of the vehicle. In addition, the owner is also required to prove that each of the above-mentioned persons had taken all reasonable and necessary precautions against the alleged illegal use of the truck for committing the forest offence. If the owner succeeds in proving these things, then no order regarding confiscation of his vehicle can be passed.

9. In the present case there is no material to show that the respondent and the driver and the cleaner had taken all necessary precautions against such illegal use of the vehicle. On the other hand, the material on record clearly shows that the driver and the cleaner were clearly hand in glove with the other accused which can be seen from the fact that when the forest officers searched the truck, the persons therein ran away. If the driver

and the cleaner were not hand in glove with the other accused, at that time they would have sought the help of the forest officers and they would not have tried to run away.

10. In the present case the authorised officer issued notices to the respondent i.e. the owner of the truck, the owner did not respond to the said notices. The owner of the truck did not turn up or reply to the said notices. Thereafter, an advertisement notice came to be issued in the local newspapers i.e. in Daily Loksatta and Daily Hindustan Times on 24.7.1998 calling upon the owner for hearing and enquiry in relation to the confiscation of the truck. Again no one turned up. Ultimately on 8.10.98, the authorised officer issued the order of confiscation of the said truck. Thus, in the present case, it is seen that the onus of the owner of the vehicle has not been discharged despite the owner being given sufficient notice.

11. In the present case, there is nothing to show that the owner had taken reasonable and necessary precaution to avoid the misuse of his truck. The authorised officer has followed the necessary procedure under the Indian Forest Act and thereafter, ordered the confiscation of the truck. No fault can be found with the authorised officer.

In the present case, it is clear that the respondent owner has failed to discharge the burden that the forest offence has been committed without his knowledge or connivance or that of the persons incharge of the vehicle and that all of them had taken all necessary precautions against illegal use of truck involved in the commission of forest offence.

12. In view of the above, I am inclined to set aside the order passed by the learned Sessions Judge, Thane and the same is hereby set aside. Rule is made absolute in terms of prayer clause (b).

13. Writ petition is allowed.